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ATTORNEY FOR APPELLANT:

RUTH JOHNSON

Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

CAREY HALEY WONG

Marion County Department of Child Services
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE INVOLUNTARY TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF L.V., MINOR CHILD, AND HIS MOTHER,)
KRYSTAL CHEEVER, AND HIS FATHER,)
MARIO VILLEGAS.)

MARIO VILLEGAS,)
Appellant-Respondent,)

vs.)

No. 49A02-0703-JV-230

MARION COUNTY DEPARTMENT)
OF CHILD SERVICES,)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria Ransberger, Temporary Judge
Cause No. 49D09-0605-JT-20814

September 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Respondent Mario Villegas (“Father”) appeals an order terminating his parental rights to L.V. upon the petition of the Appellee-Petitioner Marion County Department of Child Services (“the DCS”). We affirm.

Issue

Father presents a single issue for review: Whether the DCS established, by clear and convincing evidence, the requisite statutory elements to support the termination of his parental rights.

Facts and Procedural History

On June 19, 2005, L.V. was born to Father and Krystal Cheever (“Mother”). Mother’s two prior-born children had been removed from her care in October of 2004 after they were found living in a vacant house with little food and with drug paraphernalia in reach of the children. Mother’s eldest child alleged that Mother had touched him inappropriately and kissed him with her tongue. Mother was ordered to complete sex offender counseling.

On July 21, 2005, the DCS filed a petition alleging that L.V. was a Child in Need of Services because his parents were unable to provide necessary food, clothing, shelter, medical care, education or supervision. The DCS further alleged that Mother failed to comply with the services offered to her during the wardship of her other children and thus “the child is endangered in her care.” (Pet. Ex. pg. 35.) Allegedly, Father “failed [to] establish paternity or to successfully demonstrate to the DCS the ability or willingness to appropriately parent the child.” (Pet. Ex. pg. 35.) Father admitted the allegations of the

CHINS petition and began receiving parenting services.

In July of 2005, Father and Mother were married. L.V. was returned to Father and Mother during January of 2006, but was removed after six weeks because Father tested positive for cocaine and Mother had not completed her sex offender treatment sessions.

On May 19, 2006, the DCS petitioned to terminate Father's and Mother's parental rights to L.V. The petition was consolidated with a pending petition for termination of Mother's parental rights with respect to her other two children. On August 1, 2006, the DCS moved for a hearing on the admissibility of child hearsay. A hearing was conducted on August 30, 2007, and the court determined that statements by L.V.'s brother G.S. would be admissible at the termination hearing.

On November 16, 2006, and January 25, 2007, the trial court conducted a hearing on the petitions for termination of parental rights. Evidence adduced at the hearing disclosed that Father was unemployed and depended upon Mother for income. Mother had not completed sex offender counseling, and neither parent had completed drug abuse services. Father failed to attend the second day of the hearing.

On February 8, 2007, the trial court entered an order terminating the parent-child relationship between Father and L.V. Father now appeals.¹

Discussion and Decision

A. Standard of Review

This court will not set aside the trial court's judgment terminating a parent-child

relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor judges the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

B. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id.

Indiana Code Section 31-35-2-4(b) sets out the elements that the DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

(A) One (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

¹ Mother's parental rights were also terminated. However, she is not an active party to this appeal.

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

The trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Id.

C. Analysis

Father contends that the DCS presented insufficient evidence to establish a reasonable probability that the conditions that resulted in L.V.'s removal will not be remedied or that the continuation of the parent-child relationship would pose a threat to L.V. More specifically, Father claims that the conditions leading to L.V.'s removal were attributable to Mother rather than him and that he was hindered in his efforts to find employment by a lack of transportation.

It is well-settled that a parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Among the circumstances that a trial court may properly consider are a parent's criminal history, drug and alcohol abuse, historical

failure to provide support, and lack of adequate housing and employment. McBride v. Monroe Cty. Office of Family and Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

At the termination hearing, Father testified that he was unemployed and had “mostly seasonal” work in the past. (Tr. 57.) He had no current source of income other than Mother’s employment at a fast food restaurant. He further testified that he was dropped from a drug treatment program when he tested positive for cocaine, began treatment again, and then “lost vehicle transportation and wasn’t making it to classes.” (Tr. 62.) He admitted that his caseworker had provided bus passes and tickets in the past, but he “didn’t call and ask for more” during the second session of drug treatment classes. (Tr. 62.)

Therapist Ron Smith testified that he advised Mother to complete sex offender therapy, based upon her assessment interview and polygraph testing. He attempted to work with Mother “on identifying triggers and warning signs that would protect her from being accused of molesting her son and also protect her from molesting her son.” (Tr. 90.) However, Mother attended sessions sporadically and was “unsuccessfully discharged” from treatment. (Tr. 90.) Smith recommended that Mother not be reunified with her children before completion of the sex offender treatment program.

Family case manager Helen Stevenson testified that Father and Mother were unsuccessfully discharged from home-based counseling. She further testified that Father and Mother had last visited L.V. almost one year earlier. Neither parent had complied with recent referrals for drug screens.

As of the termination hearing, Father had not completed drug treatment services. He lacked employment and was dependent upon Mother for income. Thus, he could not provide

a home for L.V. apart from Mother, who had not completed sex offender treatment. We may not reweigh the evidence, as Father urges, to find that he has taken adequate measures to secure stable employment and to provide L.V. with an environment free of drug and sexual abuse.

Accordingly, the DCS presented clear and convincing evidence that the conditions leading to L.V.'s removal would not, in reasonable probability, be remedied.

Conclusion

The DCS established by clear and convincing evidence the requisite elements to support the termination of Father's parental rights to L.V.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.